

(6)
No. 94-203

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

**FORTIS MORSE, KENNETH CURTIS BARTHOLEMEW,
AND KIMBERLY J. ENDERSON,**

Appellants,

v.

**REPUBLICAN PARTY OF VIRGINIA AND
ALBEMARLE COUNTY REPUBLICAN COMMITTEE,**

Appellees.

JOINT APPENDIX

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**JURISDICTIONAL STATEMENT FILED JUNE 8, 1994
PROBABLE JURISDICTION NOTED JANUARY 23, 1995**

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The following opinions, decisions, judgments and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Jurisdictional Statement:

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U.S. District Court Western District of Virginia (Charlottesville)

CIVIL DOCKET FOR CASE #: 94-CV-25

5/2/94 1 COMPLAINT Filing Fee \$120.00 Receipt # 61169 Service due 8/30/94 for Albemarle County, for Republican Party of, for Oliver North For (jt) [Entry date 05/05/94]

5/4/94 3 Letter from Judge James H. Michael, Jr. requesting a three judge panel of Chief Judge Sam J. Ervin, III (hw) [Entry date 05/06/94]

5/9/94 4 ORDER, Designating a Three-Judge Court, Honorable H. Emory Widener, Jr., Honorable James R. Spencer, Honorable James H. Michael, Jr. (Order signed by Chief Judge Sam J. Ervin, III on 5/4/94) (jt)

5/11/94 7 ORDER, set Memorandum deadline to 5/16/94, set Oral Argument for 2:00 5/18/94, bankruptcy courtroom, 210 Church St, SW 2nd Floor of Commonwealth of Virginia Building, Roanoke, Virginia (signed by H. Emory Widener, Jr. on 5/10/94) (jt) [Edit date 05/12/94]

5/13/94 8 ANSWER to Complaint by Republican Party Of, Albemarle County (Attorney Daniel A. Carrell, Donald W. Lemons), (jt) [Edit date 05/16/94]

5/13/94 9 MOTION to Dismiss by Republican Party Of, Albemarle County (jt) [Entry date 05/16/94]

5/16/94 10 MOTION to Dismiss by Oliver North For U.S. Senate Committee, Inc. (Attorney Donald Wise Huffman, Frederick Wilson Chockley) (lc)

5/18/94 — COURT HEARING: (Judges Widener, Michael, and Spencer; OCR Jo Myer) Parties present w/by

counsel before 3/-Judge Panel for hearing on various motions as reflected in the record. Pltfs.' mtn. for Pamela S. Karlan to be admitted pro hac vice addressed and granted. Oral motion by counsel for Oliver North for admission pro hac vice of E. Mark Braden – granted. Order entered. Arguments as to motions. Ct. adjourned for panel to make decision. Ct. resumes w/panel tendering memorandum opinion and order to Clerk for filing. Ct. reads order into record. Ct. adj. (eh) [Entry date 5/19/94]

5/18/94 17 MEMORANDUM OPINION (eh) [Entry date 5/19/94]

5/18/94 19 MOTION to Dismiss by Republican Party Of Albemarle County (jt) [Entry date 5/20/94]

5/18/94 20 ANSWER to Complaint by Republican Party, Albemarle County (jt) [Entry date 5/20/94]

5/18/94 21 AFFIDAVIT of David S. Johnson, Executive Director of the Republican Party of Virginia (jt) [Entry date 5/20/94]

6/8/94 22 Notice of Appeal to Supreme Court (hw) [Entry date 06/09/94]

6/8/94 23 NOTICE of Dismissal of Count 5 of the Complaint by Fortis Morse, Kenneth Curtis Bartholomew, Kimberly J. Enderson (hw) [Entry date 06/09/94]

6/8/94 24 MOTION to Continue Consideration on Counts 1 and 2 by Fortis Morse, Kenneth Curtis Bartholomew, Kimberly J. Enderson (hw) [Entry date 06/09/94]

6/8/94 — MEMORANDUM for Fortis Morse, Kenneth Curtis Bartholomew, Kimberly J. Enderson in support of [24-1] motion to Continue Consideration by Kimberly J. Enderson, Kenneth Curtis Bartholomew, Fortis Morse, [23-1] notice by

Kimberly J. Enderson, Kenneth Curtis Bartholomew, Fortis Morse (hw) [Entry date 06/09/94]

6/14/94 26 TRANSCRIPT of court hearing for dates of 5/18/94 (jt)

10/19/94 27 ORDER granting [24-1] motion to Continue Consideration (signed by Judge James H. Michael) (jt)

1/27/95 28 ORDER, that probable jurisdiction is noted by Supreme Court of the U.S. on 1/23/95 (jt)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

[Caption Omitted]
COMPLAINT

Introduction

1. This action challenges the imposition of a \$45 fee on registered voters who wish to participate in the nomination process leading to the selection of the Republican candidate for United States Senator from Virginia. Plaintiffs seek declaratory and injunctive relief prohibiting the state Republican Party and its local affiliates from conditioning participation in the process on payment of any registration fee. They also seek declaratory and injunctive relief prohibiting the Oliver North for U.S. Senate Committee, Inc. from paying or offering to pay the fees for any voter who wishes to participate in the senatorial nomination process if that voter indicates a commitment to support Oliver North's nomination.

Jurisdiction

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. §§ 1973h(c) and 1973j(f). This is an action arising under the statutes and Constitution of the United States and an action to enforce statutes and constitutional provisions that protect civil rights, including the right to vote.

3. Plaintiffs seek declaratory and other appropriate relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

Parties

4. Plaintiff Fortis Morse is an adult citizen of the United States who resides in Albemarle County, Virginia. He is properly registered to vote.

5. Plaintiff Kenneth Curtis Bartholomew is an adult citizen of the United States who resides in Albemarle County, Virginia. He is properly registered to vote.

6. Plaintiff Kimberly J. Enderson is an adult citizen of the United States and a resident of Hampton, Virginia. She is properly registered to vote.

7. Defendant Oliver North for U.S. Senate Committee, Inc. (hereafter "North Committee") is a corporation incorporated under the laws of Virginia. It serves as the official campaign organization for Oliver North, a candidate for the Republican nomination for United States Senator from Virginia.

8. Defendant Republican Party of Virginia is an unincorporated association organized under the laws of Virginia. It is a political party within the definition of Va. Code §§ 24.2-101, 24.2-508, and 24.2-509 and, as such, it nominates candidates for United States Senator from Virginia. For this purpose it conducts a State Convention.

9. Defendant Albemarle County Republican Committee is an unincorporated association organized under the laws of Virginia. It is responsible for collecting the registration fees imposed by defendant Republican Party and certifying individual voters as delegates and alternates to the State Convention.

Background

10. Virginia has a long history of purposeful official restriction of the right to vote, including, but not limited to, imposition of poll taxes and other economic barriers to full political participation.

11. On information and belief, on November 1, 1964, the Republican Party of Virginia did not impose or collect any fee for participation in the party's nomination process for United States Senator.

Allegations of Fact

12. On December 16, 1993, Patrick M. McSweeney, Chairman of the Republican Party of Virginia, issued a Call for a State Convention for Friday, June 3, 1994, for the purpose of nominating a Republican candidate for the office of the United States Senator.

13. Qualified voters may participate in this process by becoming delegates to the State Convention. Delegates are elected in county or city mass meetings, conventions, or party canvasses, and they cast votes at the Convention.

14. As a practical matter, any voter who wishes to qualify as a delegate and participate in the State Convention can do so.

15. As a practical matter, delegates are not bound to support a particular candidate at the State Convention.

16. Local political committees certify qualified voters as delegates upon payment of a registration fee by the voter of \$35.00 or \$45.00 depending upon the date of certification.

17. Fortis Morse is a registered voter in Albemarle County, Virginia, and intends to support James Miller, a

candidate for the Republican nomination for United States Senator.

18. Morse is chairman of the Law and Graduate Republicans at the University of Virginia, and has been politically active on behalf of numerous Republican candidates for national, state, and local office.

19. Morse is a full-time first-year student at the University of Virginia School of Law and on the morning of February 28, 1994, had \$30.00 in his checking account.

20. Payment of a \$45.00 fee to participate in the Republican State Convention would impose a financial hardship on Morse.

21. On February 28, 1994, Morse went to Albemarle County Republican Headquarters to register as a delegate.

22. Morse asked for a county Pre-File Form. The form indicated a non-refundable filing fee of \$45.00.

23. Morse asked Rose Wade, a party worker, whether he could register as a delegate without paying the fee because he lacked the funds.

24. Wade told Morse that the fee was mandatory but that if Morse told her for whom he was going to vote, it would be different because some candidates supplied money to sponsor voters who supported them.

25. Later that afternoon, Morse returned to the Headquarters with \$50.00 he had borrowed. Wade accepted Morse's form and payment.

26. Morse then indicated that he was reluctant to owe the \$45.00 to the friend from whom he had borrowed it and

asked Wade whom he should see, if he supported Oliver North, a rival candidate for the senatorial nomination.

27. Wade identified John Pudner, who was standing in the room.

28. Pudner asked Morse to step out into the hallway, where he introduced Morse to a man whom Pudner identified as the North for Senate County Coordinator.

29. The coordinator asked Morse whether he was supporting Oliver North. Morse did not reply, but simply smiled.

30. The coordinator then handed Morse \$50.00 and Morse handed him \$5.00 in return.

31. The coordinator then wrote Morse's name on a list he was carrying and stated that if Morse did not come to the meeting "we'll hunt you down," indicating that this meant he expected Morse to be at the state convention.

32. Morse subsequently repaid the \$45.00 to the North Committee.

33. The Committee cashed his check, which was memo endorsed "Repayment for Delegate fee — John Pudner."

34. On information and belief, volunteers and staff workers connected with the North Committee have offered to pay or reimburse the registration fees of other qualified voters who undertake to support North.

35. Kenneth Curtis Bartholomew is a registered voter in Albemarle County, Virginia, and a supporter of James Miller, a candidate for the Republican nomination for United States Senator.

36. Bartholomew would have filed as a delegate to support Miller but for the imposition of the \$45.00 filing fee.

37. Enderson is a registered voter in Hampton, Virginia.

38. Enderson is vice-chairman of the Law and Graduate Republicans at the University of Virginia. She has worked on Republican campaigns for state and national campaigns.

39. Enderson intended to file as a delegate from Hampton, but was deterred from filing when she learned that she would have to pay a filing fee.

40. Many qualified voters have been deterred from participating in the senatorial nomination process by the imposition of a filing fee.

First Cause of Action

41. Plaintiffs reallege the contents of paragraphs 1-40.

42. The Republican Party of Virginia's imposition of a filing fee for participation at the State Convention violates the Twenty-Fourth Amendment to the Constitution of the United States.

Second Cause of Action

43. Plaintiffs reallege the contents of paragraphs 1-40.

44. The Republican Party of Virginia's imposition of a filing fee for participation at the State Convention violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Third Cause of Action

45. Plaintiffs reallege the contents of paragraphs 1-40.

46. The Republican Party of Virginia's imposition of a filing fee for full participation in the processes leading to the nomination of a candidate for United States Senate involves a voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964.

47. Because the Republican Party of Virginia has not obtained preclearance of this procedure, its use violates Section 5 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973c.

Fourth Cause of Action

48. Plaintiffs reallege the contents of paragraphs 1-40.

49. The Republican Party of Virginia's imposition of a filing fee for full participation in the processes leading to the nomination of a candidate for United States Senate violates Section 10 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973h(a), in that it precludes people of limited means from voting or imposes unreasonable financial hardship upon such persons.

Fifth Cause of Action

50. Plaintiffs reallege the contents of paragraphs 1-40.

51. The North Committee's practice of paying or offering to pay the registration fees for voters who wish to participate in the senatorial nomination process if they indicate a

commitment to support candidate Oliver North violates Section 11 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973i(c).

Relief

WHEREFORE, plaintiffs ask that this Court set this matter for a speedy hearing, following which it will enter orders providing relief as follows:

1. Notify the Chief Judge of the Fourth Circuit, pursuant to 28 U.S.C. § 2284, that a three-judge court should be convened, pursuant to 42 U.S.C. §§ 1973c or 1973h(c), to determine whether an injunction should issue against defendant Republican Party of Virginia enjoining its imposition of a filing fee for full participation in the processes leading to the nomination of a candidate for United States Senate unless and until the practice receives preclearance under Section 5 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973c.

2. Issue a preliminary injunction enjoining the Republican Party from conditioning participation in the June 3, 1994, State Convention upon payment of any registration fee.

3. Issue a preliminary injunction requiring the Republican Party to reopen the qualifying period for delegates to permit voters to register as delegates without payment of any filing fee, up to and including June 1, 1994.

4. Issue a preliminary injunction enjoining the North Committee from paying or offering to pay the registration fees for voters who wish to participate in the senatorial nomination process if they indicate a commitment to support candidate Oliver North.

5. Issue a declaratory judgment declaring that the filing fee violates the Fourteenth and Twenty-Fourth

Amendments to the Constitution of the United States and Section 10 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973h.

6. Issue a declaratory judgment declaring that the North Committee's practice of paying or offering to pay the registration fees for voters who wish to participate in the senatorial nomination process if they indicate a commitment to support candidate Oliver North violates Section 11 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973i.

7. Permanently enjoin the Republican Party and its local affiliates from conditioning participation in any state convention upon payment of any registration fee.

8. Permanently enjoin the North Committee from paying or offering to pay the registration fees for voters who wish to participate in the senatorial nomination process if they indicate a commitment to support candidate Oliver North

9. Order the Republican Party of Virginia or the Albemarle County Republican Committee to refund to Fortis Morse the \$45.00 filing fee the Party and Committee collected from him.

10. Award plaintiffs their costs incurred in this case, together with reasonable attorney's fees, pursuant to 42 U.S.C. §§ 1973l(e) and 1988.

11. Grant such addition and further relief as the Court finds just.

Date: May 2, 1994

Respectfully submitted,

George A. Rutherglen
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[Names and addresses of other counsel omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Charlottesville Division

[Caption Omitted]

ANSWER OF DEFENDANTS
REPUBLICAN PARTY OF VIRGINIA AND ALBEMARLE
COUNTY REPUBLICAN COMMITTEE

Defendant, the Republican Party of Virginia and its local affiliate, the Albemarle County Republican Committee (together referred to as "RPV"), by counsel, pursuant to this Court's Order of May 10, 1994, to file a responsive pleading on or before May 13, 1994, and subject to RPV's Motion to Dismiss, filed herewith, answers the Complaint of Plaintiffs as follows:

1. RPV admits that Plaintiffs purport to seek declaratory and injunctive relief by virtue of their challenge of the imposition of the \$45 fee, as asserted in paragraph 1 of the Complaint, but RPV denies that Plaintiffs are entitled to any such relief from the state party or its local committees, including defendant Albemarle County Republican Committee (the "Albemarle Committee"). Insofar as the allegations of paragraph 1 relate to defendant Oliver North for U.S. Senate Committee, Inc. (the "North Committee"), RPV admits that Plaintiffs purport to seek declaratory and injunctive relief but otherwise is without knowledge or information sufficient to form a belief as to the truth of such allegations.

2. RPV admits that this Court has subject matter jurisdiction over the Complaint.

3. RPV admits that Plaintiffs purport to seek relief under the Declaratory Judgment Act, but denies that any such relief is due.

4. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint.

5. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Complaint.

6. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Complaint.

7. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Complaint.

8. RPV admits the allegations of paragraph 8 of the Complaint except that RPV denies that the state party is organized under the laws of Virginia. As a political association it derives its existence independent of those laws.

9. RPV admits that the Albemarle Committee is an unincorporated association, but denies that it is organized under the laws of Virginia. As a political association, it derives its existence independent of those laws. RPV denies the remaining allegations of paragraph 9. RPV further states, however, that the Albemarle Committee is responsible for collecting certain convention registration fees imposed by RPV and that the Albemarle Committee selects, through one of the methods permitted under RPV rules, certain delegates and alternates to the party's State Convention. The local committee does not merely certify individual voters as delegates and alternates.

10. RPV denies the allegations of paragraph 10 of the Complaint. RPV was not a party to the conduct alleged, and any "purposeful official restriction of the right to vote" by the Commonwealth of Virginia has long since been repealed or otherwise rendered invalid.

11. RPV admits the precise allegations of paragraph 11 of the Complaint, for on November 1, 1964, no nomination process of RPV was in progress. RPV further states, however, that it has traditionally and necessarily charged registration fees

for its state conventions in order to cover their substantial costs. It charged a registration fee, for example, for the June 1964 State Convention, the agenda for which included the party's nomination of its candidate for the United States Senate.

12. RPV admits the allegations of paragraph 12 of the Complaint.

13. RPV admits the allegations of paragraph 13.

14. RPV denies the allegations of paragraph 14.

15. RPV admits the allegations of paragraph 15.

16. RPV admits that the local committees ultimately certify their delegates to the State Convention, but otherwise denies the allegations of paragraph 16. As alleged in paragraph 13 of the Complaint, delegates are selected at the city or county level, not merely certified upon the payment of a registration fee. The local party committees do collect registration fees, both for the State Convention and the local convention, mass meeting, or canvass. The Albemarle Committee collected a fee of \$45 for delegates to the 1994 State Convention, of which \$10 was a fee imposed by the Albemarle Committee.

17. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17.

18. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18. RPV further states, however, that its records reveal that plaintiff Morse was a delegate to the 1993 Republican State Convention and has been certified as a delegate to the 1994 State Convention.

19. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19.

20. RPV denies the allegations of paragraph 20.

21. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21.

22. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22.

23. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23.

24. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24.

25. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25.

26. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26.

27. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27.

28. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28.

29. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29.

30. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30.

31. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31.

32. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32.

33. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33.

34. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34.

35. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35.

36. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36.

37. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37.

38. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38.

39. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39.

40. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40.

41. In response to paragraph 41 of the Complaint, RPV repeats and incorporates its answers to paragraphs 1 through 40.

42. RPV denies the allegations of paragraph 42 of the Complaint.

43. In response to paragraph 43 of the Complaint, RPV repeats and incorporates its answers to paragraphs 1 through 40.

44. RPV denies the allegations of paragraph 44 of the Complaint.

45. In response to paragraph 45 of the Complaint, RPV repeats and incorporates its answers to paragraphs 1 through 40.

46. RPV denies the allegations of paragraph 46 of the Complaint.

47. RPV admits that it has not obtained preclearance of its registration fee, for it is not required to do so. RPV

otherwise denies the allegations of paragraph 47 of the Complaint.

48. In response to paragraph 48 of the Complaint, RPV repeats and incorporates its answers to paragraphs 1 through 40.

49. RPV denies the allegations of paragraph 49 of the Complaint.

50. In response to paragraph 50 of the Complaint, RPV repeats and incorporates its answers to paragraphs 1 through 40.

51. RPV is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51 of the Complaint.

52. In response to the requests for relief numbered 1 through 11, on pages 6 and 7 of the Complaint, RPV denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

First Affirmative Defense

53. The Complaint fails in whole and in part to state a claim upon which relief can be granted.

Second Affirmative Defense

54. If the Complaint states such a claim statutorily, granting the relief requested would be in violation of the First Amendment to the Constitution of the United States, including a prior restraint on the freedom of association.

Third Affirmative Defense

55. Plaintiffs lack standing to bring their Complaint, for they have pled no actionable injury.

Fourth Affirmative Defense

56. To the extent they seek preliminary injunctive relief, Plaintiffs are barred by the doctrine of laches.

WHEREFORE, RPV requests this Court to dismiss the Complaint with prejudice, or, in the alternative, to enter judgment in its behalf; and to award reasonable attorneys' fees and costs to RPV and grant it such other relief as may be proper.

Dated: May 13, 1994

REPUBLICAN PARTY OF VIRGINIA
ALBEMARLE COUNTY REPUBLICAN COMMITTEE

By: _____
General Counsel
Republican Party of Virginia
J. Robert Brame, III
(Virginia State Bar No. 05276)
James Center
901 E. Cary Street
Richmond, VA 23219

[Names and addresses of other counsel omitted in printing]

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Charlottesville Division

MOTION TO DISMISS
OF DEFENDANTS REPUBLICAN PARTY OF VIRGINIA
AND
ALBEMARLE COUNTY REPUBLICAN COMMITTEE

Defendants, the Republican Party of Virginia and its local affiliate, the Albemarle County Republican Committee (together referred to as "RPV"), by counsel, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, move this Court to dismiss the Complaint as to RPV on the ground that it fails to state a claim upon which relief can be granted against RPV.

In support of this motion, RPV relies on the Complaint and the memorandum to be submitted in support hereof.

Dated: May 13, 1994
REPUBLICAN PARTY OF VIRGINIA
ALBEMARLE COUNTY REPUBLICAN COMMITTEE

By: _____
General Counsel
Republican Party of Virginia
J. Robert Brame, III
(Virginia State Bar No. 05276)
James Center
901 E. Cary Street
Richmond, VA 23219

[Names and addresses of other counsel omitted in printing]

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA,
AT CHARLOTTESVILLE

[Caption Omitted]

AFFIDAVIT

COMES NOW David S. Johnson, and after being sworn, deposes and says:

1. I am Executive Director of the Republican Party of Virginia, an unincorporated voluntary association which operates pursuant to a Plan of Organization ("Plan"), a copy of which is attached hereto as Exhibit A.
2. I make this affidavit on the basis of my own personal knowledge and by researching files of the Republican Party of Virginia maintained in the ordinary course of its business.
3. Pursuant to its practice and the Plan, the Republican Party of Virginia chooses and has chosen its representatives to Federal elections by primary, convention, caucus or by vote of the governing committee of the appropriate unit (*e.g.*, State Central Committee for state-wide offices; Congressional District Committee for Representatives).
4. The basic unit of organization of the Republican Party of Virginia is the mass meeting, which is open to qualified participants:

All legal and qualified voters under the laws of the Commonwealth of Virginia, regardless of race, religion, national origin, or sex, who are in accord with the principles of the Republican Party, and who, if requested express in open meeting either orally or in writing as may be required their intent to support all of its nominees for public office in the ensuing election may participate as members of the Republican Party of Virginia in its mass meetings, party canvasses, conventions, or

primaries encompassing their respective election districts.

(Exhibit A, Article 1, Section A[1]).

5. Participants at mass meetings elect chairmen and members of the local committees (*e.g.*, county or city), delegates to state, Congressional district and legislative district conventions and conduct other Party business. Alternatively, local committees may elect to use canvass or unit conventions to perform these same functions.

6. Pursuant to the Plan, the time, location, participant qualifications and other essential facts must be voted by the respective committees and published in a newspaper of general circulation at least seven days prior to a mass meeting. This statement of the times and conditions of a meeting is termed the "Call."

7. Delegates to the State Convention elect the Party Chairman and National Committee persons, adopt resolutions and a platform outlining the philosophy of the Republican Party of Virginia, and adopt or revise the rules under which the Republican Party of Virginia and its subsidiary unit committees must operate.

8. Payment of the filing fee does not in and of itself make one a delegate to the State Convention. Under the State Party Plan of Organization, delegates to the State Convention must be elected by their unit's mass meeting, canvass or convention. The unit mass meeting, canvass or convention also has the authority to "slate" applicants out of election to the District or State conventions or instruct the entire delegation to these conventions to vote for a particular candidate or position, regardless of the individual delegates' personal preferences. *See* Exhibit A, State Party Plan of Organization, Art. VIII, Section H4. In addition, persons wishing to be delegates can be required to take a written oath to support all Republican candidates for office in the ensuing general election.

9. The rules actually governing the State Convention are those formally adopted by the delegates participating in the Convention after it is called to order.

10. In addition to the nomination of candidates for office, the Republican Party of Virginia conducts other business at its conventions, such as, but not limited to, a) the election of a State Party Chairman, b) adoption of resolutions or platforms outlining the philosophy of the grassroots members of the Republican Party of Virginia, and c) the adoption and/or revision of the rules under which the Republican Party of Virginia and its subsidiary district and unit committees must operate.

11. The expenses of the 1993 Party Convention were approximately \$373,373. The Party finances the convention expenses with delegate filing fees. With respect to the state conventions, state filing fees have been required for as far back as our records go, including 1964, and the amounts have gradually increased over the years to \$35.

12. During the past 30 years, participation in Virginia Republican state conventions has increased dramatically, going from approximately 550 certified as delegates in 1964 to 14,614 in 1994.

13. The State Central Committee of the Republican Party of Virginia selected the convention process to select its United States Senate nominee in 1964 (meeting at the John Marshall Hotel in Richmond); 1966 (Hotel Roanoke); 1970 (John Marshall, Richmond); 1972 (Roanoke Civic Center); 1976 (Scope, Norfolk); 1978 (Richmond Coliseum); 1982 (Richmond Coliseum); 1984 (Hampton Coliseum); 1988 (Roanoke Civic Center).

14. In 1990, the State Central Committee voted to choose its U.S. Senate candidate by primary, but the primary was canceled when the incumbent was not challenged for nomination.

15. In 1964 and 1978, the Party chose its U.S. Senate candidate by a vote of its State Central Committee. It scheduled

selection of its U.S. Senatorial candidate at its 1964 convention, but the delegates were unwilling to choose a nominee to challenge Senator Harry F. Byrd, Sr.

16. On December 4, 1993, the State Central Committee of the Party approved the Call for the 1994 State Convention. Pursuant to the Plan, Patrick McSweeney, Republican Party of Virginia Chairman, distributed the Call to local committees in December, 1993, and published the Call in the approved newspaper on or about May 2, 1994 ("State Call"). A true copy of the State Call is attached as Exhibit B.

17. The Call for the Mass Meeting of the Republican Party of Virginia, County of Albemarle, was published on or about February 17, 1994, scheduling the mass meeting for March 5, 1994. It recited the requirement, *inter alia*, of a non-refundable \$45 filing fee for delegates to the State Convention, a \$10 filing fee for delegates to the Fifth Congressional District, and a \$10 filing fee for delegates to the Seventh District. The Call further provided, "There shall be no registration fee charged at the Mass Meeting of the Republican Party of Albemarle County." At the Mass Meeting of the Republican Party for Albemarle County, the attendees elected delegates to the State and Congressional Conventions.

18. To my knowledge, none of the plaintiffs to this action have inquired of the Republican Party of Virginia concerning the status of fees, if any, for convention delegates in 1994, nor have they protested the fees charged for the 1994 State Convention.

19. In fact, I am aware of only one inquiry in recent years from persons who wanted to participate as delegates but could not pay the fee. In March 1994, I was advised that a student at VPI and the student's spouse wanted to participate as delegates to the State Convention but could not afford the filing fees. Without knowing or inquiring as to their candidate preference, we arranged for their fees to be paid by private contributions. I am unaware of any other persons who notified

the Republican Party of Virginia that they might be excluded from participation as delegates because of fees.

20. As participation in the Party has increased, the number of places where the Party's convention could be held has decreased. Both the convention's size and closing of facilities have necessitated regular changes in locations, in addition to the traditional practice of rotating conventions between the Eastern and Central parts of the state.

/s/
David S. Johnson

[JURAT OMITTED IN PRINTING]

Exhibit A

REPUBLICAN PARTY OF VIRGINIA

Patrick McSweeney, Chairman
J. Robert Brame, III, General Counsel
David Johnson, Executive Director

Plan of Organization

115 East Grace Street
Richmond, Virginia 23219
804/780-0111
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ADOPTED February 12, 1972

AMENDED March 23, 1972

February 24, 1973

April 26, 1975

March 27, 1976

June 29, 1979

September 15, 1979

September 27, 1980

RESTATED June 1, 1985

AMENDED June 14, 1986

April 28, 1990

July 28, 1990

June 8, 1991

May 20, 1992

ARTICLE I
Participation in Party Actions

SECTION A. Qualifications

1. All legal and qualified voters under the laws of the Commonwealth of Virginia, regardless of race, religion, national origin or sex, who are in accord with the principles of the Republican Party, and who, if requested, express in open meeting either orally or in writing as may be required their intent to support all of its nominees for public office in the ensuing election may participate as members of the Republican Party of Virginia in its mass meetings, party canvasses, conventions, or primaries encompassing their respective election districts.

2. A person who has made application for registration and meets all other requirements of Section A, but whose name does not appear on the local registration books solely because of the books having been closed in connection with a local election, will nevertheless be deemed a legal and qualified voter.

SECTION B. Participation

All Chairmen and members of Official Committees, delegates to Conventions, and voters in Mass Meetings or Party Canvasses provided for in the State Party Plan shall be members of the Republican Party of Virginia as stated in this Article and must be legally qualified voters of the respective Units or election Districts which they represent as Chairmen, members, delegates or voters.

ARTICLE II
Definitions

1. "State Party" or "Party" means Republican Party of Virginia.

2. "State Party Plan" means Plan of Organization of the Republican Party of Virginia.

3. "State Central Committee" means State Central Committee of the Republican Party of Virginia.
4. "Election District" means the City, County, ward of a City, magisterial district of a County, precinct or portions or combinations of such political subdivisions which comprise the area defined by law in which an election is to be held.
5. "Congressional District" means the Election District for a member of the House of Representatives of the United States Congress.
6. "District" means Congressional District unless otherwise designated.
7. "Legislative District" means the Election District for a member of the House of Delegates or the State Senate of the Virginia General Assembly.
8. "District Committee" means Republican Congressional District Committee for each Congressional District.
9. "Legislative District Committee" means Republican District Committee for each State Senatorial District and each House of Delegates District as the context may require.
10. "County Committee" means County Committee for the Republican Party for each county.
11. "City Committee" means City Committee for the Republican Party for each city.
12. "Unit" means County or City.
13. "Unit Committee" means County Committee or City Committee.

14. "Republican Party Voting Strength" means a uniform ratio of the votes cast in a political subdivision for the Republican candidates for Governor and President to the total votes cast in the entire Election District for the Republican candidates for Governor and President in the last preceding Gubernatorial and Presidential elections.
15. "Quadrennial State Conventions" means the State Convention held in Presidential election years for the purposes of nominating electors-at-large to the Electoral College and electing delegates-at-large and alternates-at-large to the Quadrennial national Republican Convention.
16. "Quadrennial District Conventions" means the District Convention held in Presidential election years for the purposes of nominating an elector to the Electoral College and electing Delegates and Alternates to the Quadrennial National Republican Convention.
17. "Biennial District Convention" means the District Convention held in Congressional election years and is the same as the Quadrennial District Convention in Presidential election years.
18. "Official Committees" are the State Central Committee, each District Committee, each Legislative District Committee, and each Unit Committee.
19. "Chairman", "Chairmen", "he", and "his", shall not be construed to denote gender.
20. "Ex-Officio" means the person holding the office and shall not be construed to mean with or without a vote.
21. "Mass Meeting" is as defined in the then current edition of Robert's Rules of Order subject to the provisions of the State Party Plan.

22. "Party Canvass" is a method of electing chairmen and members of Official Committees, delegates to Conventions, or Party nominees which shall include prefiling candidacies, then secret balloting by Party members at convenient polling places and hours after proper notice.

23. "Convention" is as defined in the then current edition of Robert's Rules of Order subject to the provisions of the State Party Plan.

24. "Primary" is as defined in and subject to the Election Laws of the Commonwealth of Virginia.

Definitions not set forth above, to the extent found therein and where not otherwise inconsistent with Article VII, Section H and Article VIII, Section 1.3 of the State Party Plan, shall be those set forth in the then current edition of Robert's Rules of Order.

ARTICLE III

State Central Committee

Section A. Membership

The membership of the State Central Committee shall consist of the following:

1. State Chairman
2. First Vice Chairman
3. Two (2) Vice Chairmen from the Eastern part of the State.
4. Two (2) Vice Chairmen from the Western part of the State.
5. Two (2) National Committee members.

6. President, ex officio, and two (2) elected representatives of the Virginia Federation of Republican Women.

7. President, ex officio, and two (2) elected representatives of the Young Republican Federation of Virginia.

8. President, ex officio, and two (2) elected representatives of the College Republican Federation of Virginia.

9. District Chairman of each District, ex officio.

10. Three members from each District.

11. One (1) additional member from each District that cast its plurality vote for the Republican Presidential nominee in the last preceding Presidential election.

12. One (1) additional member for each District represented by a Republican member of Congress.

13. Four (4) Republican members of the General Assembly.

14. State Treasurer and Finance Chairman.

15. State Secretary, Budget Director, and General Counsel, but they shall not be entitled to vote.

16. All publicly elected present and former Republican statewide office-holders, but they shall not be entitled to vote.

SECTION B. Election and Term

1. The State Chairman shall be elected by the Quadrennial State Convention for a term of four (4) years or until his successor is elected.

2. The Vice Chairman shall be elected by the State Central Committee at the first meeting following the Quadrennial State Convention for a term of four (4) years or until their successors

are elected. The Eastern portion of the State shall include the 1st, 2nd, 3rd, 8th, 10th, and 11th Congressional Districts, and the Western portion of the State shall include the 4th, 5th, 6th, 7th, and 9th Congressional Districts..

3. The National Committee Members shall be nominated by the Quadrennial State Convention.

4. District Members.

a. The regular members representing a District shall be elected by the Quadrennial District Convention for a term of four (4) years or until their successors are elected.

b. The additional member for each District that cast its plurality vote for the Republican Presidential nominee in the last preceding Presidential election shall be elected by the District Committee at the first meeting following the Presidential election and shall serve concurrently with the Presidential term.

c. The additional member for each District represented by a Republican member of Congress shall be elected by the District Committee at the first meeting following the Congressman's election and shall serve concurrently with the Congressman's term.

5. The members representing the General Assembly shall be elected by the Republican Members of the General Assembly at the beginning of each even year session of the General Assembly, for a term of two (2) years or until their successors are elected.

6. The State Secretary and State Treasurer shall be elected by the State Central Committee at the first meeting following the Quadrennial State Convention to serve at the pleasure of the Committee.

7. The State Finance Chairman, Budget Director, and General Counsel shall be appointed by the State Chairman to serve at the pleasure of the Chairman.

8. A person shall occupy only one voting membership on the State Central Committee at any one time.

SECTION C. Vacancies

1. A vacancy in the office of State Chairman shall be filled by the State Central Committee until the next regular State Convention, which shall then elect a State Chairman to fill the remaining unexpired portion of the term of the vacating State Chairman.

2. A vacancy in the office of Vice Chairman, State Secretary or State Treasurer shall be filled by the State Central Committee.

3. A vacancy in the office of a National Committee member shall be filled by the State Central Committee until the next regular State Convention which shall then elect a successor National Committee member to fill the remaining unexpired portion of the vacating member's term.

4. Vacancies in the District memberships of the State Central Committee shall be filled by the applicable District Committee; however, any vacancy not so filled within ninety (90) days may be filled by the State Central Committee.

5. Vacancies shall be filled after notice of such intent, has been included in the call of the meeting at which the vacancy is to be filled.

SECTION D. Duties

1. State Central Committee

a. The State Central Committee shall formulate and provide for the execution of such policies, plans, and measures

as it may deem conducive to the best interest of the Party and in conformity with the State Party Plan.

b. It shall determine whether candidates for statewide public office shall be nominated by Convention or Primary.

c. It shall call all regular and special State Conventions and make arrangements therefor, including the basis of representation, the time, and the place.

d. It shall have general supervision of all statewide campaigns. Neither the State Party nor the State Central Committee, however, shall be responsible for the financing of, or any financial obligations resulting from, such campaign, except to the extent that any such obligations may be approved and assumed in writing, in advance, by the State Central Committee.

e. It shall prescribe such additional duties of the State officers and shall appoint special State Central subcommittees as it deems appropriate.

f. Whenever the State Central Committee shall determine that a District or a Legislative District Chairman has failed to function as such, then the State Chairman shall appoint a new Chairman to perform the duties provided in the State Party Plan until a successor is duly elected by the applicable Committee.

2. State Chairman

a. The State Chairman shall be Chairman of the State Central Committee and of its Executive Committee.

b. See Article III, Section E, Paragraph 1, Executive Committee.

c. He shall issue calls for State Conventions and shall preside until a temporary organization is effected.

d. He shall convene the State Central Committee when the needs of the Party so demand, but in no event less than once during each four (4) month period and he shall preside at the meetings of the committee. He shall be responsible for sending written notice of the call for a State Central Committee meeting to all members of the Committee and to Unit Chairmen, which shall include the agenda for the meeting.

e. He shall issue, upon request, to Unit Chairmen and Unit Committeemen a commission signed by him and countersigned by the State Secretary, after notification of their elections as such.

f. He shall be responsible for the operation of State Headquarters, including hiring such personnel as he may deem necessary. He may appoint any personnel as may be required from time to time with such duties as he may prescribe. In no case shall the total salaries of the employed personnel exceed the total amount for the salaries as set out in the budget adopted by the State Central Committee.

g. He shall, acting in the name of the Party not less than ninety days prior to the end of the fiscal year, engage a firm of certified public accountants to perform an annual independent audit of the Party's financial records and affairs as of the end of the fiscal year and to report the results of such audit to the Executive Committee and to the State Central Committee.

3. First Vice Chairman

The First Vice Chairman's primary duty, until action is taken under the provisions of Article II, Section C, Paragraph 1, is to act as State Chairman when the office has been vacated by the State Chairman or during disability.

4. Vice Chairmen

The Vice Chairmen's primary duties shall be to give organizational assistance to the Official Committees in their respective portions of the State and to discharge such other duties as may be assigned by the State Chairman.

5. District Members

It shall be the affirmative duty of the District Members of the State Central Committee to cooperate with the District Chairmen and District Committees in coordinating Party activities at every level of the State organization. Membership on the State Central Committee is not an honorary, but rather a working position and each member assumes an obligation to assist in building the Party at every level and particularly within his area.

6. State Secretary

a. The State Secretary shall keep the minutes and records of the State Central Committee meetings, which shall be the property of the Committee, and he shall mail a copy of the minutes of the preceding meeting, including attendance, to all members of the State Central Committee and all Unit Chairmen within ten (10) days after the adjournment of the meeting.

b. He shall serve as the secretary of all State Conventions until a temporary organization is effected. He shall be the custodian of the record of the proceedings of each State Convention.

c. He shall keep a roster of the names and addresses of all State Central Committee members and District, Legislative District and Unit Chairmen and shall perform such other duties as the State Central Committee prescribes.

7. State Treasurer

The State Treasurer shall be the custodian of Party funds.

8. Finance Chairman

See Article III, Section E, Paragraph 2, Finance Committee.

9. Budget Director

See Article III, Section E, Paragraph 3, Budget Committee.

10. General Counsel

The General Counsel shall be a lawyer who shall advise the State Chairman and the State Central Committee on legal matters relating to Party business. He shall serve as Parliamentarian of all meetings of the State Central Committee.

SECTION E. Subcommittees

1. Executive Committee

a. There shall be an Executive Committee of the State Central Committee comprised of the State Chairman and all District Chairmen, plus the following, but they shall not be entitled to vote: The First Vice Chairman, National Committee members, President of the Virginia Federation of Republican Women, President of the Young Republican Federation of Virginia, President of the College Republican Federation of Virginia, State Treasurer, State Secretary, Finance Chairman, Budget Director, and one member of the State Senate and one member of the House of Delegates selected by the Republican members of the Virginia General Assembly who are currently serving on the State Central Committee.

b. The Executive Committee shall act for the State Central Committee when the latter is not in session and shall be subject to the direction of the State Central Committee.

c. Meetings of the Executive Committee shall be called at the pleasure of the Chairman and shall be held not less than once every three months.

2. Finance Committee

a. There shall be a State Finance Committee comprised of the State Finance Chairman, who shall be the Chairman, and one (1) member from each District, who shall be appointed by the District Chairman; however, if the District Chairman does not appoint a member, then the State Chairman with the approval of the Executive Committee shall appoint a member from that District. In addition, the State Chairman is authorized to appoint additional members to the State Finance Committee, subject to confirmation by the Executive Committee.

b. The Finance Committee shall be responsible for fund raising activities of the Party which shall be developed in coordination with the Budget Committee. Its procedures, budgets, and quotas shall be subject to approval of the State Central Committee.

c. The State Finance Chairman may appoint other officers of the Finance Committee.

3. Budget Committee

a. There shall be a Budget Committee comprised of the Budget Director, who shall be the Chairman, Executive Director of the State Party, Finance Chairman, State Treasurer and three (3) persons to be appointed by the State Chairman.

b. The Budget Committee under the direction of the State Chairman shall prepare an annual budget for approval of the State Central committee and shall establish controls to assure compliance with the budget as adopted.

c. The annual budget shall include a provision for such funds as shall be required to comply with the requirements of Article III, Section D.2.g.

4. Audit Committee

a. There shall be an Audit committee comprised of not less than five persons, at least three of whom shall be experienced in business and financial matters to be appointed by the state Chairman.

b. The Audit Committee shall be responsible for the establishment and supervision of the implementation of accounting and financial systems, procedures and policies and other internal financial controls. It shall also, in cooperation with the Chairman, select a firm to conduct the annual independent audit of the Party's financial records and supervise the conduct of this audit.

ARTICLE IV

District Committees

SECTION A. Memberships

The memberships of each District Committee shall consist of the following:

1. District Chairman
2. Unit Chairman, ex officio, of each Unit wholly or partially within the District, subject to the provisions of Article VI, Section E.
3. District Representative of the Virginia Federation of Republican Women, ex officio.
4. Young Republican Federation District Committeeman, ex officio.
5. College Republican Federation District Committeeman, ex officio.

6. District members of the state Central Committee, ex officio, but their right to vote shall be determined by Article IV, Section E.

7. Vice Chairmen, a Secretary and a Treasurer may be elected by the District Committee. They may be elected members of the District Committee, but they shall not otherwise be entitled to vote solely by virtue of holding any of such offices.

SECTION B. Election and Term

1. The District Chairman shall be elected by the Biennial District Convention for a term of two (2) years or until his successor is elected.

2. The Vice Chairman, Secretary and Treasurer shall be elected by the voting members of the District Committee for a term of two (2) years at the first meeting following the Biennial District Convention.

SECTION C. Vacancies

1. A vacancy in the office of District Chairman shall be filled by the District Committee for the remaining unexpired portion of the term.

2. Vacancies in the offices of Vice Chairmen, Secretary and Treasurer shall be filled by the District Committee.

3. Vacancies shall be filled after notice of such intent has been included in the call of the meeting.

SECTION D. Duties

1. District Committee

a. The District committee shall determine whether candidates for District public office shall be nominated by Convention or Primary.

b. It shall call all regular and special District Conventions and make arrangements therefor, including the basis of representation, the time and the place.

c. It shall have general supervision over all District Campaigns and shall cooperate with the State Central Committee in conducting statewide campaigns.

d. It shall assist in the raising funds within the District for National and State causes and otherwise assist the State Central Committee in other Party endeavors wherever practical.

e. Whenever the District Committee shall determine that a Unit Committee, or its Chairman, has failed to function as such, the District Committee shall appoint a new Committee, or a new Chairman, as the case may be. A Committee thus created shall perform their duties provided in the State Party Plan until their successors are elected at a Mass Meeting or Convention called for that purpose.

2. District Chairman

a. The District Chairman shall be the Chairman of the District Committee.

b. He shall issue calls for District Convention and shall preside until a temporary organization is effected. See Article VIII, Section A.

c. He shall convene the District Committee when the needs of the Party so demand, but in no event less than once during each three (3) month period, and shall preside at the meetings of the Committee. He shall be responsible for sending written notice of the call for a Committee meeting to all members of the Committee, which shall include the agenda for the meeting.

d. He shall be responsible for the operation of the District Headquarters, hiring such personnel as he shall deem necessary and for which funds are budgeted and shall be accountable therefor to the District Committee.

e. He shall be responsible for providing a prescribed time and place, which shall be supervised by the District Chairman, or a designated representative, for filing such declaration of candidacy and petitions as may be required by state law of a candidate in any primary election.

SECTION E. Voting Rights

Each Biennial District Convention may determine whether its members on the State Central Committee shall have a vote on its District Committee. Such voting privileges, once extended, shall continue until rescinded by a subsequent Biennial District Convention.

ARTICLE V

Legislative District Committee

SECTION A. Membership

1. The membership of each Legislative District Committee shall consist of the Unit Chairman of each Unit wholly or partially in the Legislative District, subject to the provisions of Article VI, Section E.

2. Each Unit Chairman's vote within the Committee shall be weighted in proportion to the Republican Party Voting Strength of his Unit within the Legislative District.

SECTION B. Election and Term

The Legislative District Chairman shall be elected by the Legislative District Committee at the meeting called to determine the method of nominating candidates for Legislative District office. The Chairman of a State Senate District Shall serve for four (4) years, and the Chairman of a House of

Delegates District shall serve for two (2) years, or until their respective successors are elected. He may be one of the Unit Chairmen, but shall not be otherwise be entitled to vote solely by virtue of holding said office.

SECTION C. Vacancies

A vacancy in the office of Legislative District Chairman shall be filled by the Legislative District Committee for the remaining unexpired portion of the term.

SECTION D. Duties

1. Legislative District Committee

a. The Legislative District Committee shall determine whether candidates for Legislative District public office shall be nominated by Mass Meeting, Party Canvass, Convention or Primary, where permitted to do so under Virginia Law.

b. It shall call all regular and special Mass Meetings, Party Canvasses and Conventions and make arrangements therefor, including the time and the place and, if a Convention, the basis of representation.

2. Legislative District Chairman

a. The Legislative District Chairman shall be the Chairman of the Legislative District Committee.

b. He shall issue Calls for Legislative District Mass Meetings, Party Canvasses, or Conventions and shall preside until a temporary organization is effected. See Article VIII, Section A.

c. He shall convene the Legislative District Committee when required and shall preside the meeting of the Committee. He shall be responsible for sending written notice of the Call for a Committee Meeting to all members of the Committee, which shall include the agenda for the meeting.

- d. He shall be responsible for providing a prescribed time and place, which shall be supervised by the Legislative District Chairman, or a designated representative, for filing such declaration of candidacy and petitions as may be required by state law of a candidate in any primary election.

ARTICLE VI

County and City Committee

SECTION A. Membership

The membership of each County and City Committee shall consist of the following:

1. Unit Chairman
2. Precinct Members – the number from each Precinct shall be determined by the Unit Committee on the basis of Republican candidates' votes in a recent past election or elections, but not less than one (1) member from each Precinct.
3. At-Large Members – additional At-Large Memberships may be created which shall not exceed in number 30 percent of the members of the Committee.
4. Elected Public Officials – All publicly elected Republican officials shall be additional members of the Committee, if the Unit Committee's Bylaws so provide. They shall not be classified as At-Large Members.
5. Vice Chairmen, a Secretary and a Treasurer may be elected by the Unit Committee. They may be elected members of the Unit Committee, but they shall not otherwise be entitled to vote solely by virtue of holding any such offices.

SECTION B. Election and Term

1. The Chairman and other members of the Committee shall be elected by the Mass Meeting, Party Canvass, Convention or

Primary called for the purpose electing delegates to the Biennial District Convention for a term of two (2) years or until their successors are elected.

2. The Vice Chairmen, Secretary and Treasurer shall be elected by such procedure and for such terms as shall be fixed by the Unit Party Plan, should there be one, and otherwise as shall be determined by the Unit Committee.

SECTION C. Vacancies

1. A vacancy in the office of Unit Chairman shall be filled by the Unit Committee for the remaining unexpired portion of the term.
2. Vacancies in the office of Vice Chairman, Secretary and Treasurer shall be filled by the Unit Committee.
3. Any vacancies among other elected members of the Committee shall be filled by the Unit Committee for the remaining unexpired portion of the term.
4. Vacancies shall be filled after notice of such intent has been included in the call of the meeting.

SECTION D. Duties

1. Unit Committee

a. The Unit Committee shall determine whether candidates for local and constitutional public offices shall be nominated by Mass Meeting, Party Canvass, Convention, or Primary and whether Unit Chairman and Committee members shall be elected by Mass Meeting, Party Canvass, Convention, or Primary.

b. It shall call all regular and all special Mass Meetings, Party Canvasses, Conventions and make all arrangements therefor and, if a Convention, determine the basis of representation. Authority to make such arrangements (other

than the date, time and whether there shall be, and the requirements for, any prefiling) may, at the discretion of the Unit Committee, be delegated to the Unit Chairman.

c. It shall cooperate with the State Central Committee, its District Committee, and the Legislative District Committees within its boundaries in conducting all elections and fund raising activities.

2. Unit Chairman

a. The Unit Chairman shall be the Chairman of the Unit Committee.

b. He shall issue calls for Unit Mass Meetings, Party Canvasses, or Conventions and shall preside until a temporary organization is effected. See Article VIII, Section A.

c. He shall convene the Unit Committee when required, but in no event less than once during each three (3) month period, and shall preside at the meetings of the Committee. He shall be responsible for sending written notice of the call for a Committee meeting to all members of the Committee, which shall include the agenda for the meeting.

d. He shall be responsible for providing a prescribed time and place, which shall be supervised by the Unit Chairman, or a designated representative, for filing such declaration of candidacy and petitions as may be required by state law of a candidate in any primary election.

SECTION E. District Units

Whenever a Unit is divided between two (2) or more Congressional or Legislative Districts the Chairman of such Unit Committee shall serve as the Unit representative on the Congressional or Legislative District Committee encompassing his residence. Such Unit Chairman shall designate a person residing in that part of the unit located in each of the other

involved Congressional or Legislative Districts to serve at the pleasure of the Unit Chairman as the Unit's representative on

[Page omitted from copy of Exhibit A served on appellants' counsel]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, this _____ day of [MONTH], [YEAR].

(Seal) _____

WITNESS:

(Seal) _____

(*)Inclusion of the power of substitution is discretionary with the member. Its omission shall preclude substitution.

SECTION B. Notice and Quorum

Except as provided in Section F of this Article, meetings of Official Committees shall be held upon written notice, in the case of the State Central Committee, of not less than three weeks and otherwise, of not less than one week on the call of the Chairman, or on the call of one-third of the members, which call shall include the agenda for the meeting. Unless otherwise provided by a District's or Unit's Plan or Bylaws, a majority of the voting members of a Committee shall constitute a quorum for the transaction of business.

SECTION C. Removal

Any Chairman, except the State Chairman, or any other member of an Official Committee may be removed from office by total vote of two-thirds (2/3) of the other members of the Committee, after being furnished with notice that such removal will be sought, with the charges, in writing, signed by not less than one-third (1/3) of the members of the Committee; and allowing

him thirty (30) days within which to appear and defend himself. The State Chairman may be removed by a two-thirds (2/3) vote of a State Convention or by the three-fourths (3/4) vote of the State Central Committee, the action of said Convention or Committee being subject to the foregoing as to notice and opportunity for defense.

SECTION D. Absences

A member of an Official Committee other than an ex-officio member automatically loses his committee position if he is absent three (3) consecutive meetings without representation by a person holding a proxy; provided, however, that a State Central Committee member automatically loses and is deemed to have resigned his Committee position if he fails to attend in person at least fifty (50) percent of the regular meetings in any calendar year. A vacancy created by such resignation shall be filled in accordance with the State Party Plan.

SECTION E. Nominations by Committee

Whenever an Election District fails to nominate a candidate or candidate for public office, in the absence of an instruction to the contrary by the Convention or Mass Meeting, the official Committee of that Election District is authorized to nominate such candidate or candidates by two-thirds (2/3) vote of those present in a Committee meeting after notice of such intent has been included in the call of the meeting, and the nominations shall have the same force and effect as if the person or persons were nominated by a Mass Meeting, Party Canvass, Convention or Primary.

SECTION F. Filling Vacancies

Whenever candidates, electors, delegates or alternates have been duly elected by a Mass Meeting, Party Canvass, Convention, or Primary and a vacancy occurs, the applicable Official Committee is authorized to fill such vacancy in formal meeting by majority vote after due notice of such intent has been

included in the call of the meeting. such a meeting shall require at least twenty-four (24) hours notice, either written or verbal.

SECTION G. Public Meetings

All Official Committee meeting shall be held in a building appropriate for public use and shall be open to the public.

SECTION H. Rules

All Official Committee meetings shall, to the extent applicable, be governed by and conducted in accordance with, giving precedence as listed to, the following: the State Party Plan; District or Unit Plan or Bylaws; and otherwise in accordance with the then current edition of Robert's Rules of Order.

ARTICLE VIII

Mass Meetings, Party Canvasses, Conventions and Primaries

SECTION A. Call Requirements

1. All calls for State, District and Legislative District Conventions, shall be issued by the appropriate Chairman to the included Unit Chairman not less than thirty (30) days, except those calls for special elections, prior to the Convention date. Each call shall include:

- a. The qualifications for membership in the Republican Party of Virginia as stated in Article I.
- b. The time, place and purposes to the Convention.
- c. The basis of representation to the Convention.
- d. The number of Delegate votes to which all participating Election Districts are entitled.
- e. The amount of the registration fee, if any.

2. All calls for Mass Meetings or Party Canvasses shall be published in a newspaper of general circulation in the Election District not less than seven (7) days, except those calls for

special elections, prior to the Mass Meeting or Party Canvass. Each call shall include:

- a. The qualifications for membership in the Republican Party of Virginia as Stated in Article I.
- b. The time, place and purposes of the Mass Meeting or Party Canvass.
- c. In the event a purpose is to elect Delegates to a Convention, the time, place, purpose of, and the basis of representation to the Convention.
- d. The amount of registration fee, if any.

3. In order to be a requirement for any election by a Mass Meeting, Party Canvass, or Convention, prefiling shall be approved by the appropriate Official Committee and the prefiling requirement included in the call. The call, including the prefiling requirement, must then be published in a newspaper of general circulation in the Election District at least seven (7) days prior to the prefiling deadline. This publication requirement shall take precedence over the publication requirement of Article VIII, Section A.2. Each person desiring to prefile must file a statement prior to the deadline for prefiling. The Official Committee or its Chairman, if authorized, may prescribe the use of a particular filing form for the required statement

4. It is the responsibility of the applicable Chairman to use the most effective means available, including news media, to adequately publicize Mass Meetings, Party Canvasses, or Conventions with the purpose of encouraging maximum citizen involvement. This publicity shall include the method of Delegate selection.

5. In the event that a published call for any Mass Meeting, Party Canvass or Convention shall differ in any respect from the call authorized by the Official Committee, the requirements of

the published call, unless contested prior to adjournment or conclusion, shall upon adjournment or conclusion of the Mass Meeting, Party Canvass, or Convention be conclusive and not thereafter subject to contest. Participation in a Mass Meeting, Party Canvass, or Convention shall not prejudice the rights of any person signing a petition protesting the validity of such Mass Meeting, Party Canvass, or Convention.

6. A Mass Meeting or Convention may by unanimous consent dispense with the reading of the call.

SECTION B. State Conventions

A State Convention, which may be the Quadrennial State Convention, or Primary shall be held in each year in which there is to be an election for Governor or United States Senator for nominating candidates for the applicable offices, and for other proper purposes.

SECTION C. District Conventions

A District Convention, which may be the Quadrennial or Biennial District Convention, or Primary shall be held in each year in which there is to be an election for Congressman for nominating a candidate and for other proper purposes.

SECTION D. Legislative Convention

A Legislative District Mass Meeting, Party Canvass, Convention, or Primary shall be held in each year in which there is to be an election for members of the General Assembly from the Legislative District for nominating a candidate(s) and for other proper purposes.

SECTION E. Unit Conventions

A Unit Mass Meeting, Party Canvass, Convention, or Primary shall be held in each year in which there is to be an election for local or constitutional offices for nominating candidates for the applicable offices, and for other party purposes.

SECTION F. Unit Representation

Representation in all State and District Conventions shall be by Units based upon the Republican Party Voting Strength, but each unit shall be entitled to at least one delegate vote.

SECTION G. Uniform Ratio

Representation in Legislative District and Unit Conventions shall be by either Units, Wards, Magisterial Districts, Precincts, or the like, on a uniform ratio established by the appropriate Official Committee, but each such political subdivision shall be entitled to at least one delegate vote.

SECTION H. Delegates

1. Certification

a. Delegates and alternates to a Convention shall be certified to that Convention by the permanent Chairman, and Secretary of the Mass Meeting, or Convention which selected, or by the Chairman of the Official Committee which may have conducted a party canvass to select, the delegates and alternates. The certifications shall be delivered to the Chairman of the official Committee which called the Convention prior to the convening of the Convention. Except in the case of the State Central Committee, a copy of the certification shall also be delivered to the secretary of the official committee. Such Chairman shall be responsible for the preparation of a roll of all such certifications which roll shall thereafter govern the procedures of the Convention, unless and until changed by the Convention.

b. In the case of a State Convention a copy of unit certifications shall also be delivered to its District Chairman.

c. In the case of a District Convention, said certifications must be delivered to the appropriate District Chairman and Secretary seven (7) days prior to the convening of said Convention. In the case of a State Convention, said

certifications must be postmarked sixteen (16) days prior to the convening of the Convention or delivered in person fourteen (14) days prior to the convening of said Convention. After the filing deadline of the certifications, no change may be made except a certified alternate may be made a delegate. A copy of the published official call of the Convention, Mass Meeting, or Party Canvass called for the purpose of selecting delegates and alternates to convention must accompany the certification with the date of the publication included.

d. A delegate or alternate who is not certified in accordance with the above requirements shall be seated only by a majority vote of the Credentials Committee, or in the event of the failure of the Credentials Committee to seat, by a vote of the Convention.

2. A delegation to a Convention may not have more than five (5) delegates and five (5) alternates per delegate vote. No delegate may have less than 0.20 votes.

3. The certification of delegates may state how the delegates shall vote whether by those present voting full vote, or non-full vote, and if an how an allocation of votes is fractionalized. A delegation shall vote full vote unless otherwise designated by the electing body.

a. Full vote means the delegates present and voting at the Convention may cast the full vote of the delegation with proportionate weight given to majority and minority vote. Example: If a County has ten votes to a Convention but only six delegates are present at the Convention and four desire to support one candidate and two desire to support another candidate, the four delegates would cast 6.67 votes for their candidate and the two delegates would cast 3.33 votes for their candidate.

b. Non-full vote shall mean that each delegate will only be entitled to the vote to which he is certified. Example: if a County has ten votes to a Convention and elects fifty delegates non-full vote, each delegate present at the Convention would have 0.20 vote.

c. The vote of a delegation shall be reported to the nearest hundredth. Example: If a 37-vote delegation has 85 delegates present with 22 voting for A and 63 voting for B, A's vote would be $22/85 \times 37 = 9.58$; B's vote would be $63/85 \times 37 = 27.42$.

4. No delegation shall vote under a unit rule at any Convention; however, the Mass Meeting, Party Canvass, or Convention electing the delegates may instruct its delegates on candidates or specific issues. Unless otherwise provided in the instruction, an instruction shall be deemed to be limited to the first Convention ballot in respect of the election or other matters covered by the instruction.

5. The delegates present in a given delegation shall designate which alternate shall vote in the place of an absent delegate, except where the body electing the delegates has determined that another method of alternate selection shall be used.

SECTION I. Rules

1. The Official Committee shall prepare the rules and order of business for the conduct of a Convention in advance thereof. Said rules and order of business shall then be submitted to the Committee on Rules of such Convention for its consideration and report to the Convention.

2. The official Committee shall prepare the rules for the conduct of a Party Canvass subject to the provisions of the State Party Plan.

3. All Mass Meetings, Party Canvasses, Conventions, and Primaries shall, to the extent applicable, be governed by and conducted in accordance with, giving precedence as listed to, the following: The State Party Plan, District or Unit Plan or By-Laws; rules adopted by a designated Rules Committee; and otherwise in accordance with the then current edition of Robert's Rules of Order.

SECTION J. Primaries

When an Official Committee has declared for a Primary for nominating candidates for public offices, the State Central Committee shall establish consistent with State Law the necessary rules and regulations for the conduct of such Primaries and assist in every practical manner.

SECTION K. National Convention Delegates

Procedures concerning Conventions at which delegates and alternates to National Conventions are elected shall comply with the applicable Rules of the National Republican Party.

SECTION L. Public Meetings

Every Mass Meeting, Party Canvass, or Convention shall be held in a building appropriate for public use and shall be open to the public. If after a call for a Mass Meeting, Party Canvass, or Convention, it shall be determined that the size of the building designated in the call shall be inadequate relative to the anticipated attendance or the building designated in the call, the location may be changed by the Chairman issuing the call to a more adequate, but equally accessible, building provided that written notice of the new location be posted at the location originally selected for the meeting, and further provided that those attending are allowed sufficient time to be present at the alternate location and to participate in the Mass Meeting, Party Canvass, or convention.

SECTION M. Special elections

Special Mass Meetings, Party Canvasses, and Conventions shall be held to nominate candidates in special elections and for other proper purposes.

SECTION N. Divided Units

1. No member of a Unit Mass Meeting, Party Canvass, or Convention shall vote for delegates to a Convention of a District of which he is not a resident.
2. When a Mass Meeting or Convention has divided in order to choose delegates to different Election District Conventions, each resulting division may, by majority vote, elected to adopt its own rules and it shall otherwise be conducted in accordance with Article VIII, Section 1.3 of the State Party Plan.

ARTICLE IX

Change in Boundaries

In the event the boundaries of a Unit are changed between the time of the last preceding Gubernatorial or Presidential elections and the time set for a State or District Convention, the Republican Party voting strength shall be transferred between the Units affected on the basis of the percentage of registered voters by Precincts which have been transferred.

In the event the boundaries of a Legislative District, Ward, Magisterial District or Precinct are changed, then a method equal or similar to that aforementioned shall be used for determining the Republican votes transferred between the affected political subdivisions and therefore the revised Delegate allotments of Committee memberships.

ARTICLE X

Rulings and Appeals

SECTION A. Rulings

1. Any Chairman of an Official Committee or twenty (20) percent of the members of an official Committee may request a ruling or interpretation of the State Party Plan from the General Counsel. The General Counsel's determination shall be binding unless and until overturned upon appeal, either to the Appeals Committee or directly to the State Central Committee.
2. The Appeals Committee shall consist of the State Chairman, all of the State Vice Chairmen and a General Assembly Committee Member appointed by the Joint Republican Legislative Caucus. The State Chairman shall promptly convene this Committee when necessary, either in person or by telephone, and shall participate in its deliberations and decisions.
3. In the event of an appeal to the Appeals Committee and a concurrence by a majority of that Committee with the Ruling or interpretation of the General Counsel, it may be further appealed to the State Central Committee, whose decision shall be binding in accordance with Article X, Section C.

SECTION B. Contests

1. Each Unit Committee shall decide all controversies and contests arising within its jurisdiction, but those persons deemed adversely affected by any such decision shall have the right of appeal to the appropriate District Committee. In the case of a split Unit, if the controversy or contest specifically relates to the operations or affairs of a particular Congressional or Legislative District, an appeal shall be taken to that District Committee; if not, an appeal shall be taken to the District Committee of the District wherein the person appealing resides.
2. Each District Committee shall decide all controversies and contests arising within its jurisdiction. It shall also hear and decide all timely appeals taken from units within the District. Persons deemed adversely affected by a decision of the District

Committee shall have the right of appeal to the State Central Committee.

3. All appeals, under sub-sections 1 and 2 of this section must be made in writing within thirty (30) days after the decision appealed from and the appeal must be accompanied by a petition signed by at least twenty-five (25) Party members of the Unit or District affected.

SECTION C. Finality

The State Central Committee shall make the final decision, upon timely appeal, on all Party controversies and contests in any Election District of the State, rulings of the General Counsel and on all other matters deemed to affect the efficiency of the Party organization or the success of the Party.

ARTICLE XI

Amendments

The State Party Plan may be amended by any State Convention by three-fourths (3/4) roll call vote; or by the State Central Committee by three-fourths (3/4) of its members present, but not less than a majority of the total members, after notice of such intent and general text of such amendment has been included in the call of the meeting.

Exhibit B

**CALL FOR THE STATE CONVENTION OF THE
REPUBLICAN PARTY OF VIRGINIA FOR FRIDAY, JUNE
3, 1994, AT TWO O'CLOCK P.M.
AND SATURDAY JUNE 4, 1994 AT TEN O'CLOCK A.M.,
RICHMOND COLISEUM, RICHMOND, VIRGINIA**

As Chairman of the Republican Party of Virginia and pursuant to the Party Plan and as recommended and directed by the State Central Committee, I, Patrick M. McSweeney, do hereby issue this Call for a State Convention to be held at the Richmond Coliseum, Richmond, Virginia, starting at two o'clock (2:00) p.m. local time on Friday, June 3, 1994, for the purpose of nominating a Republican candidate for the office of United States Senator and for the transaction of such other business as may properly come before the Convention; and I further direct the Executive Director of the Republican Party of Virginia to publish this Call in a daily newspaper of general circulation in the Commonwealth at least thirty (30) days prior to the convening date of the State Convention, as required by the Party Plan.

QUALIFICATION FOR PARTICIPATION

All legal and qualified voters under the laws of the Commonwealth of Virginia, regardless of race, religion, national origin, or sex, who are in accord with the principles of the Republican Party of Virginia and who, if requested, express in open meeting, either orally or in writing as may be required, their intent to support all of its nominees for public office in the ensuing election, may participate as members of the Republican Party of Virginia in its Mass Meetings, Party Canvasses, Conventions or Primaries encompassing their respective Election Districts.

COMPOSITION OF CONVENTION

The State Convention shall be composed of delegates and alternates of the respective units they represent. Representation shall be based on the total number of Republican votes cast in each county and city in the last preceding presidential and gubernatorial elections. Each unit is allowed one delegate vote and one alternate vote for each 250 Republican votes cast or major portion thereof. Each county or city shall be entitled to at least one delegate and one alternate. The delegates and alternates shall be elected in county and city Mass Meetings, Conventions or Party Canvasses that shall be held between March 1, 1994 and April 1, 1994 (except for the City of Alexandria which shall be between February 26, 1994 and April 1, 1994). If Units require pre-filing of delegates the deadline may not be before February 26, 1994 (except for the City of Alexandria which may not be before February 23, 1994). These shall be called for this purpose in conformity with the Party Plan of the Republican Party of Virginia by each unit committee in the state.

CERTIFICATION OF DELEGATES

The delegates present in a given delegation shall designate which alternates shall vote in the place of an absent delegate, except where the electing body that elected the delegates has determined another method of alternate selection. (Note: Full vote means that the delegates present and voting at the Convention may cast the full vote of the delegation with proportionate weight given to majority and minority vote. Non-full vote shall mean each delegate will only be entitled to vote the vote to which he is certified.) The said delegates and alternates to the State Convention so elected shall be certified in writing with their respective names and addresses (including zip codes) over the signatures of the permanent chairman and permanent secretary of the county or city Mass Meeting, Convention, or Party Canvass, as well as the signature of the current unit chairman. If the Certification and registration fee is postmarked or delivered in person no later than fourteen (14) calendar days following the local Mass Meeting, Convention or

Party Canvass, then the registration fee shall be \$35.00 for each delegate and alternate certified. If the Certification and registration fee is postmarked or delivered in person more than fourteen (14) calendar days following the local Mass Meeting, Convention or Party Canvass, then the registration fee shall be \$45.00 for each delegate and alternate certified.

ALL CERTIFICATIONS AND FEES, REGARDLESS OF DATE OF LOCAL MASS MEETING, CONVENTION OR PARTY CANVASS, MUST BE POSTMARKED NO LATER THAN SIXTEEN (16) DAYS PRIOR TO THE CONVENING OF THE SAID CONVENTION (MAY 18, 1994), OR DELIVERED IN PERSON FOURTEEN (14) DAYS PRIOR TO THE CONVENING OF THE SAID CONVENTION (MAY 20, 1994).

After a Certification is received, or the May 20 deadline is reached or has passed, no changes, additions or deletions may be made, except a certified alternate may be made a delegate.

Payments for registration fees are not deductible as charitable contributions for income tax purposes. Fees will be used for Federal and State election purposes. No refunds will be issued after May 20. A copy of the published Call of the Convention, Mass Meeting, or Party Canvass, called for the purpose of selecting delegates and alternates to said Convention, must accompany the certification, with the date of publication included. Certification should be mailed or delivered as follows:

- * ORIGINAL: PAGE ONE OF THREE
Mr. Patrick McSweeney, Chairman
Republican Party of Virginia
115 East Grace Street
Richmond, Virginia 23219
- * SECOND COPY: PAGE TWO OF THREE
The respective District chairman

* THIRD COPY: PAGE THREE OF THREE
For the Unit's records

NOTE: A delegate or alternate is not certified until his name, address and phone number has been provided on the Certification and all his fees have been paid.

Authorized by the Republican Party of Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

[Caption omitted]

NOTICE OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(i), plaintiffs in the above named case hereby voluntarily dismiss Count 5 of the Complaint against Oliver North for U.S. Senate Committee, Inc.

George A. Rutherglen
Counsel of Record
Virginia State Bar No. 18938
580 Massie Road
Charlottesville, VA 22903-1789
(804) 924-7015

[Names and addresses of other counsel omitted in printing]

Date: June 8, 1994